

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

3 - - - - -  
4 UNITED STATES OF AMERICA,

5 -versus-

11-CR-533

6 (SENTENCING)

7 JEREMY ZIELINSKI,

8 Defendant.  
9 - - - - -

10 **TRANSCRIPT OF PROCEEDINGS** held in and for the  
11 United States District Court, Northern District of New  
12 York, at the James T. Foley United States Courthouse,  
13 445 Broadway, Albany, NY 12207, on **FRIDAY, JUNE 21, 2013**,  
14 before the **HON. THOMAS J. McAVOY**, Senior United States  
15 District Court Judge.  
16  
17

18 **APPEARANCES:**

19 FOR THE GOVERNMENT:

20 HON. RICHARD S. HARTUNIAN, United States Attorney - NDNY  
21 BY: ROBERT A. SHARPE, Assistant U.S. Attorney - NDNY

22 FOR THE DEFENDANT: (Standby Counsel)

23 CARTER, CONBOY LAW FIRM  
24 BY: JAMES A. RESILA, ESQ.

-and-

25 JEREMY ZIELINSKI, Pro se

ALSO PRESENT:

MICHAEL PATNAUDE, U.S. Probation Officer - NDNY

**THERESA J. CASAL, RPR, CRR**  
**UNITED STATES DISTRICT COURT - NDNY**

**USA v. Zielinski - 11-CR-533**

1 (Court commenced at 1:00 PM.)

2 THE CLERK: United States of America versus Jeremy  
3 Zielinski, 11-CR-533. May I have the appearance for the  
4 Government, please.

5 MR. SHARPE: Robert Sharpe on behalf of the United  
6 States Government, joined by Michael Patnaude of the United  
7 States Probation Office. Good afternoon, Judge McAvoy.

8 THE COURT: Good afternoon, Mr. Sharpe. Good  
9 afternoon, Mr. Patnaude.

10 MR. PATNAUDE: Good afternoon, your Honor.

11 THE CLERK: On behalf of the defendant.

12 THE DEFENDANT: Jeremy Zielinski, pro se. Good  
13 afternoon, Judge.

14 THE COURT: Good afternoon, Mr. Zielinski.

15 MR. RESILA: And James Resila, Carter, Conboy; I  
16 am standby counsel.

17 THE COURT: Good afternoon, Mr. Resila. All  
18 right. We are here really for the purposes of sentencing.  
19 There was a petition filed by the Probation Office with the  
20 Court charging Mr. Zielinski with failing to complete and  
21 comply with his mental health treatment program and  
22 Mr. Zielinski denied that that was so and so a hearing was  
23 ordered, that was held before Magistrate Judge Peebles, he  
24 issued a Report Recommendation indicating that the condition  
25 had been violated, among other things, and then objections

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1 were filed to those findings and Magistrate Judge Peebles'  
2 decision and the Court had issued an order earlier this  
3 month addressing those objections.

4 So, at this point in time, the Court is ready to  
5 proceed with sentencing Mr. Zielinski for that violation.  
6 And we met last week and I believe Mr. Zielinski requested a  
7 few days to gather some materials together so he could  
8 address the issue of sentencing before the Court, which was  
9 granted, so we came back for this procedure today.

10 So, I think the first order of business would be  
11 to have Mr. Zielinski address the Court on what he believes  
12 sentencing should be, followed by Mr. Sharpe, and I think  
13 that's how we'll proceed.

14 So, Mr. Zielinski, if you'd like to address the  
15 Court.

16 THE DEFENDANT: Yes, your Honor. I think, at this  
17 point, the Sentencing Guidelines require a period of  
18 incarceration.

19 THE COURT: Require?

20 THE DEFENDANT: A period of incarceration. I  
21 think the Guidelines, given the history of the case and my  
22 conduct, I think it's actually required that you give me  
23 incarceration. But I know the Government was going to argue  
24 for a significant period of incarceration. I don't know  
25 what they're going to argue for yet, but I think an extended

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1 period of incarceration would be unwarranted and unnecessary  
2 in light of what motivated my conduct at FMHA and subsequent  
3 to my understanding of what was going on, which was brought  
4 about by the Court's rulings in this matter. And I also  
5 think it would defeat the overall goals of supervised  
6 release and unnecessarily give up on the goals that the  
7 Court had imposed as special conditions in the first place.  
8 Actually, right at the time when -- as a result of what the  
9 Court just did for the last nine days, that those goals  
10 become available. The conduct I engaged at at FMHA was  
11 motivated by a genuine belief that it was morally right,  
12 morally required and that it was the only thing I had  
13 available to me. I believed sincerely that my only options,  
14 since I didn't believe what they were saying, was to remain  
15 silent, to play along and just lie. And I believe that that  
16 conduct, since that was the basis for my speaking out, I  
17 believe that what I was doing was lawful. I believe that  
18 not only was it lawful, but that it was constitutionally  
19 protected even, given the limited set of rights I have  
20 available to me while on supervised release.

21 The Court ultimately ruled that my conduct was not  
22 protected, but it did find that it had no doubt of the  
23 sincerity of the beliefs which underlied that conduct. It  
24 characterized my conduct as based on a misguided belief that  
25 I could refuse to participate in any aspect of the program I

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1 didn't agree with. It wasn't malicious, it wasn't  
2 ill-willed. And any conduct with that motivation doesn't  
3 require or warrant the type of penalty that would be imposed  
4 for conduct to be motivated by malice or rebellion. All it  
5 requires is additional education on what the law requires  
6 and protects or doesn't protect, and that's all that's  
7 necessary to prevent that kind of conduct going forward.

8 And the Court's ruling has provided that quite  
9 clearly, regardless of whatever my actual disagreement is, I  
10 don't have the right to speak out in that way if it's  
11 disruptive because of the effects it has on other people and  
12 the Government's operations. And I can abide by that going  
13 forward. I didn't have the benefit of that ruling when the  
14 Court first imposed special condition five.

15 The other reason that I don't think a long period  
16 of incarceration would be appropriate is that quite to my  
17 surprise, I realized in the last few days that I actually  
18 was wrong about my entire premises of my position in the  
19 first place that I don't believe them. I sincerely believed  
20 that I was right. I really truly 100 percent believed I was  
21 morally right and protected by law. So when the Court not  
22 only ruled against me, but then threw me in jail, my initial  
23 reaction was just complete shock. I was astonished at how  
24 wrong I turned out to be. But after that wore off, I wanted  
25 to know where did I go wrong, what error did I make, what

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1 was the flaw in my logic that led me to reach conclusions  
2 that were so astoundingly wrong.

3           As I carefully looked at it, I realized I didn't  
4 actually choose the beliefs I had, I didn't will myself to  
5 believe they were wrong, I didn't will myself to believe  
6 that FMHA was incorrect. I just found myself believing  
7 that. And I can't will myself to believe anything about  
8 human nature anymore than I could will myself to believe  
9 that the law rules the universe, for example. It's just not  
10 the way it works. And the unavoidable result that I came to  
11 from that is that since my conduct is motivated, at least in  
12 part, by whatever beliefs I have and I don't necessarily  
13 have complete control over what I believe, that there are  
14 influences in my conduct that I genuinely don't have any  
15 control over. And that's one of the claims that FMHA made  
16 that I most strongly rejected throughout this entire  
17 proceeding.

18           And when I started to look at why I realized that  
19 the reason I didn't believe that any things they were saying  
20 were true were because I was looking at them from the wrong  
21 perspective. All I looked at was their conclusions, I gave  
22 a cursory look at their reasoning, chain of logic and  
23 reasoning that they arrived at and I looked at my own  
24 experience. Their conclusions genuinely didn't make any  
25 sense to me and seemed false because I was looking at them

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1 using the wrong chain of reasoning. They contradicted my  
2 own conclusions. But looking at them from my own  
3 perspective, they didn't make sense.

4 But that's not the case when I look at them from a  
5 different perspective, and being forced into a jail cell, I  
6 was forced to analyze all that. And I really would like  
7 actually -- genuinely would like the opportunity to go back,  
8 first of all, to apologize for being such a  
9 self-righteously, dismissive jerk while I was there and to  
10 actually find out what it is that they were talking about,  
11 because at least one of the claims that they made upon  
12 further analysis has proven to be true and I was proven to  
13 be wrong. And although I don't like to be wrong, I do like  
14 to be proven wrong because to be proven wrong removes error.  
15 And I think if I was allowed to go back, either with a  
16 different group or even with the same group, and simply  
17 explain what I've explained here, it -- I could comply with  
18 and complete the program, I could abide by the rules and  
19 policies and answer the questions posed by staff and follow  
20 their instructions because I have a totally different  
21 perspective than I had even a few days ago. So I think it  
22 would be premature to simply give up and throw me in jail  
23 when I could at this point complete the program.

24 The other reason that I don't think a long jail  
25 sentence is warranted is simply because of the extensiveness

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1 of the otherwise positive accomplishments I've had over the  
2 last year-and-a-half. I held a full-time job for over a  
3 year. The only reason I lost that job was because the  
4 employer lost a competitive bid to somebody else. I have  
5 visitation, weekly visitation with my son, after a long  
6 court battle; I pay my child support every single week. I  
7 am a student at Hudson Valley Community College, I have one  
8 semester left to graduate with an Associate degree in  
9 liberal arts, to be followed by a bachelor's in sociology,  
10 and eventually with a successful law degree. I know I put  
11 some of my rough outlines before the Court. I've maintained  
12 a consistently high GPA, I have been on the President's list  
13 twice. I am a delegate of the secular students'  
14 association. For 2013 and 2014, I was elected, in a  
15 competitive election, to the faculty-student association.  
16 Assuming I'm allowed to go back to school in the fall, I  
17 will represent 11,000 students on inter-collegiate  
18 athletics, grants and scholarship programs, working directly  
19 with the President and Directors of the college, State  
20 Legislature, educational foundation, all these things that  
21 are necessary to increase access to and effectiveness of  
22 education.

23 I've also been elected to be a delegate, one of  
24 three students, to be representing Hudson Valley at SUNY.  
25 These are educational opportunities I'll simply never get

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1 again. If I'm in jail, I'll never get these opportunities  
2 again, I just won't. No matter how long I spend there, no  
3 matter what I do when I get out, having to leave these  
4 positions because of incarceration would be detrimental.

5 I also, since then, since last time I came before  
6 the Court, started a not-for-profit corporation, very  
7 successful in combating discrimination against people with  
8 criminal records. With my action against the City of  
9 Oswego, I directly saved at least a dozen jobs. I spent a  
10 lot of money on it, no personal stake in it. I did that  
11 because it was the right thing to do. That was clearly  
12 unlawful. Since then, I have been working with the Attorney  
13 General's office to evaluate and review all ongoing cases.  
14 I was consulted last fall by City Council for a major city  
15 on how to supplement State legislation. I've had a number  
16 of occasions where the Department of Labor has made calls to  
17 me, I've got on the phone with employers or State agencies  
18 and talked to them about why people were denied jobs and  
19 been able to, in some cases, secure employment, in other  
20 cases reverse terminations, negotiate policy changes with  
21 multi-national companies, on many occasions. I passed that  
22 information on to the Probation Office. I've offered to  
23 work with the Probation Office.

24 I was an invited speaker at Siena College in 2013  
25 on eliminating cultural bias against people with criminal

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1 records. We have the largest discrimination case pending in  
2 New York State history in the Division of Human Rights  
3 against Costco right now, another major case hasn't been  
4 filed yet, and this will open doors at thousands of  
5 locations throughout the country. Working with a major  
6 utility to bring a program that they currently have in  
7 England, where they actually train people in prison and give  
8 them jobs the day they get out, to bring that program to the  
9 United States. And these are very high-paying, career-level  
10 jobs. Line workers can make upwards of a hundred thousand  
11 dollars a year. These aren't McDonald side line jobs.

12 And all of these things, these are just  
13 highlights; I could go on for two days about all this --

14 THE COURT: No, you can't.

15 (Laughter.)

16 THE DEFENDANT: -- with the permission of the  
17 Court. But these are things that directly reduce  
18 recidivism. Proved over and over and over again that  
19 getting people jobs when they get out of jail is one of the  
20 surest ways to reduce crime, and, for whatever reason,  
21 whether it's my personal history or personal drive or  
22 whatever, I am very, very good at this. And it's something  
23 that I can continue doing, something I want to continue  
24 doing, and none of these things that I just talked about  
25 will bear any fruit if I am ordered by this Court to rot

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1 away in a jail cell.

2 So, I just -- in light of the fact that I made a  
3 very terrible embarrassing mistake about my initial  
4 conclusions about the program and that I'm willing to  
5 correct it and go back and cooperate, I think a much more  
6 appropriate sentence would be to sentence me to a short  
7 period of incarceration that would allow me to go to school  
8 in the fall and then make up whatever time period the Court  
9 thinks is necessary, either home confinement or weekends or  
10 community detention.

11 THE COURT: Thank you, Mr. Zielinski.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Sharpe.

14 MR. SHARPE: As always, Mr. Zielinski argues a lot  
15 of things. As the Government understands it, in part what  
16 he argues and what he just argued a moment ago is his claim  
17 that it's been shown, quote, over and over again that  
18 getting people jobs has been shown to reduce recidivism.  
19 Mr. Zielinski is a convicted sex offender, he is a  
20 registered level II sexual offender. One of the things that  
21 the Government knows would, in fact, address, as best it's  
22 able, the idea of recidivism is a sex offender involved in a  
23 mental health treatment program, more specifically a sex  
24 offender treatment program, that we do know. Mr. Zielinski  
25 ought to be on supervised release and he ought to be

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1 supervised and he ought to be in a mental health program and  
2 sex offender program because of his background and history.

3 That having been said, the Government states to  
4 the Court, in our view, that at this present time, in view  
5 of all this history that we're all familiar with, that he  
6 should not be on supervised release at this time and there's  
7 no point of him being in a sex offender treatment program at  
8 this point in time. That's not because of the actions of  
9 anybody that has dealt with him in the course of attempting  
10 to help him as he's finished his past jail sentence and now  
11 has been on supervision; that's because of his choices and  
12 his actions; he's responsible for that.

13 Whatever the sentence imposed against him is or  
14 upon him here today, nobody is responsible for that other  
15 than Mr. Zielinski. We're familiar with Mr. Zielinski  
16 throughout the history of the pendency of this matter and we  
17 have no idea if the things that he's saying are true or  
18 somewhat true or bald-faced lies, where we have a variety of  
19 people out there in the State who have no idea who and what  
20 they might be dealing with, who knows. But whatever  
21 sentence is imposed upon him today, whether he's taken away  
22 from all these good works that he claims to be involved in,  
23 nobody is responsible for that other than him.

24 The Government would like to address some things  
25 that we know that the Court is aware of. Whether it be in

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1 terms of the sentence that he originally received on his  
2 original federal conviction, or the sentences that are  
3 imposed upon him in connection with the violations of  
4 supervised release, we're all aware that amongst the factors  
5 that the Court has considered -- can consider are the nature  
6 and circumstances of the offense, the history and  
7 characteristics of the defendant, the idea of deterrence and  
8 the need to protect the public. And there is a significant  
9 need to protect the public here, in terms of his history.  
10 In the Government's view, based upon what we know of him and  
11 what we've been involved with, Mr. Zielinski poses a danger  
12 to the community for a variety of reasons. We know that the  
13 Court is abundantly familiar with his history, but,  
14 nonetheless, we'd like to go through some of that.

15 As the Court is aware, Mr. Zielinski was  
16 originally charged in early 2000s, when he was a younger  
17 man, at the age of 18 with a variety of offenses, which  
18 included promoting the sexual performance by a child,  
19 attempted dissemination of indecent material to a minor and  
20 bail jumping. The Court is familiar with the facts with all  
21 those things, that it involved him at the time engaging in  
22 internet chats with a person whom he believed to be a  
23 13-year-old girl and involved things having to do with  
24 master/slave sexual relationships as well as the  
25 transmission of images of sadomasochistic child pornography.

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1 As the Court is aware, those charges were not initially  
2 disposed of; that while he had been arrested on those  
3 things, Mr. Zielinski fled to Florida. He was gone and  
4 evaded law enforcement for a couple years, and during that  
5 time, he continued to engage in criminal conduct. The Court  
6 is familiar with what ultimately led to his New Jersey  
7 federal conviction, that he became involved with an internet  
8 group by the name of Shadow Crew, where he was a vendor and  
9 became involved in an organized criminal group promoting  
10 internet fraud schemes with stealing and trafficking in  
11 stolen credit cards, computer hacking and trafficking in  
12 counterfeit identification documents.

13 Separate and apart from that, as the Court is  
14 aware, that case also involved law enforcement obtaining a  
15 search warrant that was executed at that time and while they  
16 were investigating that fraud matter, on his computer at  
17 that time there were additional pornographic images, child  
18 pornographic images, whatnot, that were obtained from him.

19 He was sentenced in 2006 in New Jersey to  
20 twenty-one months and two years' supervised release. And  
21 thereafter, he was produced back to Warren County, where he  
22 answered for the original charges in conjunction with the  
23 bail jumping, and the Court is aware that he received a  
24 State prison sentence of two to six years at that time. We  
25 know and we've noted before at various aspects of this

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1 proceeding that while he received a State indeterminate  
2 sentence of two to six years that he served every day of  
3 that six-year sentence, and he did that because of  
4 information that's been before the Court at various times;  
5 that in terms of his prior criminal background at that  
6 point, related to his sex offender classification and his  
7 crimes, that he was ordered to participate in prison in the  
8 sex offender counseling and treatment program. As Judge  
9 Peebles noted in his Report and Recommendation to the Court,  
10 Mr. Zielinski has never successfully completed any sex  
11 offender treatment program. But, again, because of his own  
12 actions and conduct.

13 In regards to that program in State prison, he was  
14 dismissed from that program for having disobeyed rules,  
15 challenging the authority of program officials, being  
16 disruptive during group meetings and he was removed from the  
17 program for noncompliance. Additionally, as the Court has  
18 heard at earlier stages of this and the prior violation,  
19 that while in that program, he possessed pornography on the  
20 very first day of the program. Later he was caught in  
21 possession of 20 adult pornographic websites, and if the  
22 Court recalls, he also acquired, in prison, a book on rape  
23 and, for all those reasons, he was discharged from the  
24 program.

25 We dealt with the prior violation in this case

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1 approximately a year or so or more ago. If the Court  
2 recalls, he had -- what he admitted to was leaving the  
3 jurisdiction of the Court without the permission of the  
4 Court or the Probation Office. There is more of a context  
5 to this. We also know that he lied to Probation ahead of  
6 time, that he lied to Probation after the fact and he had  
7 gone to, under whatever manipulated circumstance he was  
8 attempting to achieve, to obtain his own private  
9 recommendation by a doctor that, of course, he was something  
10 or should have been something other than the level II sex  
11 offender that he's been classified as. Part of the  
12 background and context of this case that we note all along  
13 is that while that doctor in that instance had actually  
14 rendered a report on Mr. Zielinski, we know, in terms of  
15 what was in the report, that it was largely based on  
16 self-reported information provided by the defendant that  
17 wasn't honest, wasn't forthright, wasn't complete.

18 In terms of things this Court has considered at  
19 various times with the history of the proceedings here,  
20 there have been other reports rendered as to Mr. Zielinski.  
21 As part of the earlier materials of the State, there was a  
22 Caleo report that had information about his background and  
23 information that he provided. You know, when we dealt with  
24 that violation a year ago, the Court imposed additional  
25 conditions on him. One of 'em was for him to be involved in

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1 a mental health program and a sex offender treatment  
2 program. Another aspect that we're all aware of is, in  
3 terms of all of us dealing with that prior violation, we all  
4 recall that the Court admonished him at that time that part  
5 of what was needed here was an attitude adjustment on his  
6 part to work with the Probation Office and to have some  
7 appreciation of the fact that the Court, Probation, law  
8 enforcement, the Government was attempting to help him and  
9 attempting to work with him so that assistance could be  
10 provided to him, but also so that the public could derive a  
11 benefit from that, where it would have a legitimate impact  
12 on the likelihood that he would recidivate in the future and  
13 that he could deal with his various issues.

14 And we know that the Court is familiar with the  
15 report of Judge Peebles and was familiar with the hearing  
16 that was conducted over the course of two days. And  
17 everybody's aware, right from the get-go -- the Government  
18 wants to comment on this point: We understand that  
19 Mr. Zielinski wants to wrap his arms around this idea of,  
20 Judge, I may have been misguided or mistaken, but I acted in  
21 good faith, I -- I'm a good, faithful practitioner of  
22 objectivism or I have these legitimate concerns about the  
23 program. And the Government, whether the Court agrees or  
24 not, refutes that and disputes that. We don't buy that, we  
25 don't buy that for a moment.

**THERESA J. CASAL, RPR, CRR**  
**UNITED STATES DISTRICT COURT - NDNY**

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1 Part of the background information from a variety  
2 of these reports from doctors that have dealt with him is  
3 we're all aware that Mr. Zielinski is a very bright person,  
4 but whether he appreciates these doctors or credits these  
5 reports, part of what they've cited to is his constant  
6 manipulation in the use of that. We don't believe that he's  
7 ever engaged in good faith. He rejects the idea that he  
8 should be part of a mental health treatment program, that he  
9 should have to be in a sex offender treatment program.  
10 Mr. Zielinski apparently thinks that none of us have watched  
11 the Charlie Brown specials with Lucy pulling the football  
12 away from Charlie Brown as he now suggests he's seen the  
13 errors of his ways and wants to now go back to a sex  
14 offender treatment program. We're all done with that, it  
15 seems, from the Government's view.

16 There are a variety of issues here, but the  
17 Government's thinks it could be boiled down to a basic  
18 thing: Whether you look at the history, in terms of his  
19 underlying convictions or the history of the violations, the  
20 Government believes that he's a dangerous person, not only  
21 because of the facts attendant to his underlying  
22 convictions, but by his manipulation of circumstances  
23 thereafter. And again, as we started with, we think he --  
24 that under different circumstances, he should be supervised,  
25 should be in a program. But he can't be. He's not gonna

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1 comply with any conditions or program anymore than he did  
2 with the prison program or anymore than he did with Forensic  
3 Mental Health here. So society or the public, if you will,  
4 is losing the benefit of law enforcement being in a position  
5 to be able to keep an eye on the likes of what someone like  
6 him is up to. And that's problematic, in the Government's  
7 view.

8 We understand that his range is 3 to 9 months, and  
9 the statutory maximum is 24 months. He needs to answer for  
10 all this. Like he always -- he needs to answer for this and  
11 there should be -- bottom line, we believe he should do  
12 every day that's available, he should receive a 24-month  
13 sentence to answer to the fact that he's not gonna be  
14 supervised in a program, as he ought to be, and that's  
15 because of what he's done.

16 THE COURT: All right. Thank you, Mr. Sharpe.

17 Mr. Zielinski, there's some good things I heard  
18 from you today and accurate things I heard from the  
19 Government as well. None of us in this room have any doubt  
20 that you're a very bright individual, but I think the  
21 question is sometimes you use your intelligence in the wrong  
22 way.

23 I do recall sitting here not too long ago and  
24 looking you in the eye and saying during the course of your  
25 supervised release it's not you that controls the course of

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1 that, it's the Court and Probation Department, and I'd like  
2 to see a change of attitude come about as a result of your  
3 supervision. And because of your history, and I'm not gonna  
4 go back and talk about Warren County or your fleeing to  
5 Florida, all those things, they've all been talked about,  
6 the records are clear on all that stuff, what I'm gonna talk  
7 about is the fact that you decided right off that you  
8 weren't gonna participate in this program. You did  
9 everything you could possibly, factually and legally do to  
10 block it, including an appeal of this Court's order to the  
11 Second Circuit, which was appropriate that ya took the order  
12 to the Circuit and asked 'em to review it. They reviewed it  
13 and said yes, Mr. Zielinski, you have to come back and go  
14 into this program. And that didn't mean just go in the door  
15 and spend two months in September and October going to  
16 sessions. It meant actually listening to what they were  
17 telling you, following what they were telling you. Not that  
18 you have to believe it; nobody's trying to alter your  
19 thought process, that's yours, yours alone, and you're  
20 certainly correct about that. But the problem is, as the  
21 Court saw it, based on your past, you were a danger at that  
22 point when I ordered you to go into the program without  
23 receiving some kind of help so that when ya got out, there  
24 was less of a chance of recidivism. And the Court has a  
25 duty to protect the public from that type of recidivation.

**THERESA J. CASAL, RPR, CRR**  
**UNITED STATES DISTRICT COURT - NDNY**

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1 Well, when you went to the program and you refused  
2 to do the assignments and you disrupted the class by  
3 continually asking questions, the other members of the class  
4 were frustrated, they didn't do their part -- actually, it  
5 was extremely disruptive, and you were discharged from the  
6 program. And ya know, I think the thing that really  
7 questions me about how ya think -- not that you're not  
8 bright, you are -- but when you set up your own video camera  
9 within the confines of that program without anybody's  
10 permission or knowledge and began videotaping on your own  
11 what was goin' on in that chamber, which was supposed to be,  
12 anyone would know, highly confidential, certainly any  
13 material that was let out that could show these other  
14 people, who have no involvement with you except as class  
15 participants, participating, telling how they committed  
16 their crimes, their sexual violations, what things they  
17 might be able to do to prevent them, which is what the  
18 program is all about, it's not about religion as has been  
19 completely fleshed out in a hearing and the Judge's  
20 decision.

21 So, here we sit. I ordered you to the program.  
22 You went into program and refused to participate. You  
23 refused to participate after the Circuit ordered ya to do  
24 that. And not only did ya not participate, but you  
25 disrupted it and then you secretly taped it. What do you

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1 think that's gonna make me think about whether or not you're  
2 still dangerous? I think you are and I have to sentence you  
3 accordingly, although I think Mr. Sharpe's assessment of how  
4 long I have to sentence you is a little over the top to what  
5 I'm inclined to give you. So that's where we are at this  
6 point.

7 MR. RESILA: Your Honor --

8 THE COURT: Mr. Resila, this is not a hybrid  
9 matter; you're standby counsel --

10 MR. RESILA: Right.

11 THE COURT: -- and Mr. Zielinski was free to  
12 contact you with any questions about whatever presentation  
13 he would make before this Court at this sentencing and he's  
14 done a fine job from what he said. He's pointed out to me  
15 he's probably got some good possibilities in the future, the  
16 things he's doin' in Oswego, things he's doin' in college,  
17 the things he's doin' with the Attorney General's Office.  
18 Those things are all positive things. Court's not ignoring  
19 those things. I don't think that's gonna go away 'cause he  
20 wants to do those things and, as he said, he's good at it.  
21 And that's probably true. But what did ya want?

22 MR. RESILA: I just -- Mr. Zielinski's mother is  
23 here, if your Honor would like to hear her.

24 THE COURT: Well, I'd certainly like to hear her,  
25 but I don't ever make a practice in sentencing procedures of

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1 hearing from anybody unless they're a victim of a crime.  
2 And if I did do that -- and Ms. Zielinski, no offense to  
3 you, it's not personal at all -- you know, every sentencing  
4 I would have would turn into a five-day procedure, people  
5 would want to come in and tell me, you know, back in 1999 he  
6 helped me take out my garbage, mow my lawn, you know, all  
7 the kinds of stuff I get in letters, which I read every bit  
8 of and spend a tremendous amount of time reading what other  
9 people think about the defendant, and, of course, parents  
10 and siblings and relatives and people that work with the  
11 defendant, who know another side to him, always like to  
12 convey that to the Court. And that's very important to the  
13 Court in the sentencing process. But I don't allow verbal  
14 presentations and I haven't for 27 years, I'm not gonna  
15 change now, too old to change, but I think the way I do it  
16 is probably okay with most people.

17 So, let me proceed back to my sentencing today.  
18 The Probation Officer has found and the Court agrees that  
19 the violation constitutes a grade C violation, your criminal  
20 history category is a I. In accordance with the policy  
21 statements set forth in Chapters 7B1.1 and 4 of the U.S.  
22 Sentencing Guidelines, your imprisonment range suggested by  
23 those Guidelines and policy statements is three to nine  
24 months. Of course, what is in those policy statements and  
25 guidelines is subject to what the Court feels would be an

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1 appropriate sentence and is not binding upon the Court. And  
2 like the regular Guidelines, which have been found by the  
3 U.S. Supreme Court to be no longer mandatory, but to be  
4 something the Court has to consider in the sentencing  
5 process, the Court also has to give sentencing  
6 considerations to the policy statements in the Guidelines  
7 with respect to supervised release violations sentencing.

8 So, upon your plea of guilty to the violation of  
9 supervised release petition and pursuant to the Sentencing  
10 Reform Act, it's the judgment of this Court that you are  
11 hereby committed to the custody of the Bureau of Prisons to  
12 be imprisoned for a term of 14 months. The sentence imposed  
13 represents an imprisonment sentence above the advisory  
14 guideline as the defendant has demonstrated an unwillingness  
15 to comply with this Court's sex offender treatment  
16 condition. The Court will not impose a term of supervised  
17 release following this sentence.

18 After considering your present financial  
19 condition, the Court will not impose any fine.

20 You're remanded to the custody of the U.S. Marshal  
21 in accordance with the terms of this sentence.

22 Both you and the Government have the right to  
23 appeal this sentence under certain limited circumstances,  
24 but the Court would advise you that you should consult with  
25 counsel or do your own research, whichever you're inclined

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1 to do, and ya have to file any notice of appeal you want to  
2 take within 14 days of the date of this sentence.

3 So, the Court is going to stand adjourned at this  
4 time and that's the end of this proceeding.

5 (This matter adjourned at 1:35 PM.)

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## C E R T I F I C A T I O N

I, THERESA J. CASAL, RPR, CRR, CSR, Official Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings held in this matter and caused the same to be transcribed; that the foregoing is a true and correct transcript of the same and whole thereof.

/s/ Theresa J. Casal

THERESA J. CASAL, RPR, CRR, CSR

USDC Court Reporter - NDNY

DATED: October 23, 2013

**THERESA J. CASAL, RPR, CRR  
UNITED STATES DISTRICT COURT - NDNY**